1:16 MJ 2148

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

I, Lucas M. Battani, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook user ID that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user ID.

2. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in Cleveland, Ohio and have been since October of 2009. Prior to that, I was employed as a Police Officer with the South Bend, Indiana Police Department from June 1998 until October 2009. From April 2004 to October 2009, I investigated federal violations as a Task Force Officer assigned to ATF. I am a graduate of both the Federal Law Enforcement Training Center Criminal Investigator Program as well as the ATF Special Agent Basic Training Program. Working as federal law enforcement officer, who is engaged in enforcing criminal laws, I have received extensive training related to the investigation of federal crimes to include violent crimes, firearms offenses, fugitive investigations, narcotics trafficking, extortion, and other violations.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended

to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of 18 U.S.C. § 1513(b)(1) (Retaliation against a witness, victim, or an informant) and 18 U.S.C. § 1001(a)(2) (False Statements to Made to Department or Agency of the United States) have been committed by Micah JACKSON (hereinafter, "M. JACKSON"), with Facebook user ID 100006222701270 (https://www.facebook.com/real.mizzy.1). There is also probable cause to search the information described in Attachment A for evidence of these crimes and contraband or fruits of these crimes, as described in Attachment B.

PROBABLE CAUSE

OVERVIEW OF INVESTIGATION

5. On November 4, 8, and 9, 2016, Target M. JACKSON (DOB: XX/XX/XX96) attended a Supervised Release Violation (SRV) hearing for defendant Clint JACKSON (DOB: XX-XX-XX91), Case No. 1:13-cr-00002-CAB. Clint Jackson's SRV hearing involved a new law violation alleging that he fired a handgun at Michael Deskins (hereinafter, "Deskins") (DOB: XX/XX/XX92), Devin Sweat (hereinafter, "Sweat") (DOB: XX/XX/XX95), and one other individual.

6. Clint JACKSON and M. JACKSON are brothers.

7. Throughout the SRV hearing, M. JACKSON was observed attending each court proceeding on November 4, 2016, November 8, 2016, and the morning of November 9, 2016.

8. Sweat testified on November 8, 2016; Deskins testified on the morning of November 9, 2016. During the United States' case-in-chief, Deskins and Sweat testified in

substance that they saw Clint Jackson either holding a gun or reaching for what appeared to be a handgun before they heard gun shots. Deskins and Sweat were both compelled to testify, despite their attempts to assert their Fifth Amendment, while under federal subpoena from Assistant United States Attorney Benedict S. Gullo. Prior to testifying, Deskins and Sweat explained they were reluctant to testify. During their testimony, Deskins and Sweat stated that others would negatively view their testimony as "snitching."

9. Based on Affiant's training and experience, individuals who testify against other individuals are commonly referred to as "snitches" and "rats."

10. Prior to the conclusion of the SRV hearing for defendant Clint JACKSON, it was discovered that on November 9, 2016, M. JACKSON posted two photographs of both federal witnesses, Deskins and Sweat, to the internet social media website Facebook.com. Accompanying the photographs were repeating images of a rodent and the words "Free Paypa." Following M. JACKSON's Facebook post, at least one associate of Sweat ("Meechi Mi") argued with M. JACKSON on Facebook as to whether Sweat voluntarily testified as a snitch.

11. Information obtained during an interview of M. JACKSON confirmed the Facebook post was meant to make others aware of the identity of federal witnesses providing testimony against his brother, Clint JACKSON.

12. M. JACKSON further confirmed that photographs of Deskins and Sweat were taken utilizing the camera on the Target Cellular Telephone, and that the photographs were posted to Facebook.com utilizing the same cell phone.

13. M. JACKSON further confirmed his intent in making his Facebook post was to show others that Deskins and Sweat "were lying" and that "they would man up" and "say that my brother didn't do it."

14. M. JACKSON further admitted that he knew a street gang called "ATM" (All The Money), and that he referenced ATM to Meechi Mi while they argued about the pictures he posted of Deskins and Sweat.

15. The target of this investigation, M. JACKSON, resides at XXXX Turner Blvd., Apt. XX, Elyria, OH.

INTERVIEW OF MICAH JACKSON

16. On November 9, 2016, M. JACKSON was interviewed by Affiant on the 15th floor of the United States Federal Courthouse, located at 801 West Superior Avenue, Cleveland, OH 44113. This interview was conducted and audio recorded by Affiant while in the presence of Deputy U.S. Marshal Christopher Snack and Court Security Officer Charles Turner.

17. Prior to asking M. JACKSON any questions, Affiant identified himself as a federal agent with the ATF and that he wanted to ask M. JACKSON questions regarding the aforementioned pictures of Deskins and Sweat that he posted to Facebook.

18. ATF and the USMS are federal agencies operating within the jurisdiction of the executive branch of the United States Government.

19. During the interview, M. JACKSON initially lied about who "Paypa" was, saying that "Paypa" was his friend, John Jackson. After being informed by Affiant that lying to a federal officer is a federal offense punishable by up to five years in prison, M. JACKSON admitted that "Paypa" was his brother, Clint JACKSON.

20. When then asked who the males were depicted in his Facebook post, M. JACKSON stated he didn't know their names. (On the Facebook post however, M. JACKSON referenced one of the males as "Devin Sweat" with four rodent emojis next to Sweat's name.)

21. M. JACKSON further admitted he had made a post to the internet social media website Facebook. The Facebook post depicted two photographs of two government witnesses, Michael Deskins and Devin Sweat, accompanied by a repeating image of a rodent, repeated 15 times, and the words "Free Paypa." In summary, M. JACKSON stated that his purpose of posting Deskins and Sweat's photographs was to show others that they testified against M. JACKSON's brother and that they lied.

22. When asked why he repeatedly posted an emoji of rodents above Deskins and Sweat's photographs, M. JACKSON stated he didn't know why he posted pictures of rodents above Deskins and Sweat's pictures and that he just "tapped it" when he posted their photographs.

23. M. JACKSON admitted the photographs, Facebook post, and his conversations on Facebook were made with his cellular telephone.

24. M. JACKSON was further questioned regarding "AVE" and "ATM", which became a topic of discussion between M. JACKSON and Meechi Mi on Facebook. M. JACKSON explained that "ATM" aka "All The Money," is a street gang, but then he stated that ATM has nothing to do with his brother's SRV hearing. M. JACKSON further stated that "ATM" are "his homies" and that they're "solid too."

25. Affiant explained to M. JACKSON that his cellular telephone was being confiscated and held by the United States Marshals Service under order of the district court.

26. Following the interview, M. JACKSON was escorted out of the courthouse pursuant to a removal of the building court order issued by U.S. District Court Judge Christopher Boyko.

FACEBOOK TERMS

27. Facebook owns and operates a free-access social networking website of the same name that can be accessed at http://www.facebook.com. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

28. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

29. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

30. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

31. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

32. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a

link to see the photo or video. For Facebook's purposes, the photos and videos associated with a user's account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

33. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a "chat" feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

34. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

35. Facebook has a "like" feature that allows users to give positive feedback or connect to particular pages. Facebook users can "like" Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become "fans" of particular Facebook pages.

36. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

37. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as "liking" a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user's Facebook page.

38. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs ("blogs"), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.

39. The Facebook Gifts feature allows users to send virtual "gifts" to their friends that appear as icons on the recipient's profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other "pokes," which are free and simply result in a notification to the recipient that he or she has been "poked" by the sender.

40. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

41. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications ("apps") on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

42. Facebook uses the term "Neoprint" to describe an expanded view of a given user profile. The "Neoprint" for a given user can include the following information from the user's profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications.

43. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

44. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications,

including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

45. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's "Neoprint," IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses; investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to "tag" their location in posts and Facebook "friends" to locate each other. This geographic and timeline information may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity

may provide relevant insight into the Facebook account owner's state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner's motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

46. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

47. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

48. Based on the forgoing, I request that the Court issue the proposed search warrant.

49. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is "a district court of the United States . . . that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).

50. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

Respectfully submitted,

Lucas M. Battani

Special Agent
Bureau of Alcohol, Tobacco, Firearms & Explosives

Subscribed and sworn to before me on November 28, 2016.

DAVID A. RUIZ
UNITED STATES MAGISTRATE JUDGE